

## § 1233.9

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

### § 1233.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 1233.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1233.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both.

(d) If a program is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both. In addition, if a state process recommendation for a nonselected program is transmitted to the Agency by the single point of contact, the Director follows the procedures of § 1233.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 1233.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

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### § 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Agency through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the Agency's decision, in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purpose of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

### §§ 1233.11–1233.12 [Reserved]

### § 1233.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

## PART 1235—LOCALLY GENERATED CONTRIBUTIONS IN OLDER AMERICAN VOLUNTEER PROGRAMS

Sec.

1235.1 Definitions.

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APPENDIX TO PART 1235—PROCEDURES TO RESOLVE QUESTIONED COSTS

AUTHORITY: 42 U.S.C. 5024; 42 U.S.C. 5060.

## Corporation for National and Community Service

## § 1235.3

SOURCE: 56 FR 4732, Feb. 6, 1991, unless otherwise noted.

### § 1235.1 Definitions.

As used in this part and in section 224 of the Domestic Volunteer Service Act of 1973, as amended, the following definitions shall apply:

(a) *Director* means the Director of ACTION.

(b) *Locally Generated Contributions* means all contributions generated by the grantee in support of the grant, including non-ACTION Federal, State, local government and privately raised contributions.

(c) *Amount Required by the Director* means the proportion of the non-Federal contribution (including in-kind contributions) for a grant or contract made under the Domestic Volunteer Service Act of 1973, as amended, required by the Director in order to receive ACTION funds. This proportion is generally 10% for the Foster Grandparent Program/Senior Companion Program (FGP/SCP) and generally 10%, 20% and 30% for the Retired Senior Volunteer Program (RSVP) in the first, second, and subsequent years respectively. The "amount required by the Director" is also called the "local match."

(d) *In Excess of the Amount Required by the Director* means of the total locally generated contributions, the amount over and above the percentage match (generally 10% for FGP/SCP and 10%, 20% and 30% for RSVP in the first, second, and subsequent years respectively) required by the Director of ACTION to be raised from non-ACTION sources to support the grant.

(e) *Inconsistent with the Provisions of This Act* means expenditures not in support of ACTION programs, as defined by the Domestic Volunteer Service Act of 1973, as amended. For example:

(1) Inconsistency with the age threshold for volunteers for all Older American Volunteer Programs (OAVP);

(2) Inconsistency with the low income test for the FGP and SCP programs;

(3) Variations from the approved stipend levels for the FGP and SCP programs;

(4) Inconsistency with the prohibition against political activity under all the OAVP programs; and/or

(5) Unreasonable cost for a low-cost volunteer program.

### § 1235.2 Implementation guidance.

ACTION's implementation of section 224 of the DVSA is based on fundamental principles regarding the Congressional intent of the Section as well as the Executive Branch's policy on Federal financial assistance to grantees. These principles include:

(a) That ACTION may not restrict grantees' use of excess contributions as long as those expenditures are "not inconsistent" with the Domestic Volunteer Service Act of 1973, as amended;

(b) That grantees are to fully account for and document expenditures of non-Federal contributions, regardless of whether they are used to meet ACTION's local match requirement or are in excess of the requirement; and

(c) That all expenditures in support of a Federal grant can be audited by the responsible Federal Agency or by independent auditors performing audits pursuant to OMB Circulars A-128 and A-133. Copies of OMB Circulars A-128 and A-133 are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

### § 1235.3 Statement of policy.

(a) Expenditures of locally generated non-Federal contributions required by the Director as matching funds must meet the requirements specified in ACTION's Grant Management and Program Operations Handbook, ACTION Order 2650.2, as amended, and the Domestic Volunteer Service Act of 1973, as amended. Copies of ACTION's Grants Management and Program Operations Handbook, ACTION Order 2650.2, as amended, are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

(b) All expenditures by the grantee of Federal and non-Federal funds (including expenditures from excess locally generated contributions) in support of the grant are subject to ACTION authorized audits.

(c) ACTION will not restrict the manner in which locally generated contributions in excess of the required

match are expended if these expenditures are not inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

#### APPENDIX TO PART 1235—PROCEDURES TO RESOLVE QUESTIONED COSTS

I. Because implementation of section 224 may impact on how questioned costs are treated when raised in the context of an audit or program monitoring exercise, this appendix explains how questioned costs will be resolved. This part does not create any new auditing requirements.

II. All expenditures in support of a federal grant may be reviewed by an authorized audit or program monitoring review. Adequate financial records and supporting documentation must be maintained for both cash and in-kind contributions. (See ACTION's Grants Management Handbook for Grantees, ACTION Order 2650.2)

III. Three definitions are important to understand in relation to resolution of questioned costs:

(a) The term "questioned cost", pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3, means an expenditure of grant funds that is questioned because of:

(1) An alleged violation of a provision of the Domestic Volunteer Service Act of 1973, as amended, or other law, regulation, or grant governing the expenditure of funds by the grantee;

(2) A finding that at the time of an audit or program review the cost is not supported by adequate documentation; or

(3) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

(b) The term "disallowed cost" means a questioned cost related to federal or local match expenditures that ACTION management, in a management decision, has sustained or agreed should not be charged to the Government.

(c) The term "program finding" means a questioned cost identified as from the grantee's excess locally generated contributions which is referred to ACTION program management for consideration.

IV. When costs are questioned from locally generated contributions, a distinction will be made between costs as part of the *local match* and costs as part of the *excess contribution*.

V. Normally, when expenditures of Federal or non-Federal local match funds are questioned, a management decision is made to either allow or disallow the costs. When an expenditure of excess locally generated funds is questioned, however, it will not be treated as a potential disallowed cost but identified as a program finding and referred to ACTION program management for resolution.

VI. Program findings may include, but are not limited to:

(a) Inadequate records to document the expenditures and provide assurance of the grantee's internal controls over the use of its cash and in-kind contributions; and

(b) Evidence that expenditures were made that are inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

VII. Once program findings are determined by ACTION program management, decisions may be made to take corrective steps, including but not limited to:

(a) Requiring the grantee to adhere to stated program goals and objectives as a condition for future funding;

(b) Requiring the grantee to adopt a stronger financial management and control system.

Based on past experience, it is expected that corrective steps will be needed only in rare instances.

VIII. If the grantee has raised locally generated contributions in excess of the matching requirement and those expenditures are not questioned, and are consistent with the DVSA of 1973, as amended, for local match expenditures, they may be substituted for any disallowed portion of local match costs in order for the grantee to meet its matching requirement.